

**BPB Appeal No. A1292**

**IN THE MATTER OF**

the Building Act 2004 (the Act)

**AND**

**IN THE MATTER OF**

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **The Appellant** against a decision of the Registrar

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	26 <sup>th</sup> September 2017 – Holiday Inn Auckland Airport
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Appeal heard by:	Richard Merrifield Mel Orange Brian Nightingale Faye Pearson-Green
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Appearances by:	The Appellant
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## 1.0 Introduction

- 1.1 The Appellant of Auckland applied for a Design 3 Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 14 July 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 14 August 2017 the Appellant lodged an appeal to the Board against the Registrar’s decision.

## 2.0 Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.<sup>2</sup> The minimum standards are set out as “Competencies” in Schedule 1 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:

*The grant of a Design 2 Licence*

The Appellant noted in his Appeal Application that the Board also consider him for a Design 1 Licence.

- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 1, 2, 3, 4 & 5 for a Design 2 Licence.

### **Design 1 and 2 Licence Competencies:**

*Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.*

*Competency 2: Manage the building design process.*

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>S335(4) of the Act

*Competency 3: Establish design briefs scope of work and prepare preliminary design.*

*Competency 4: Develop design and produce construction drawings and documentation.*

*Competency 5: Manage construction phase.*

#### **4.0 Registrar's report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.

4.2 The Registrar's report notes, at paragraph **19**, the following from the Assessor's recommendations:

- The Appellant has significant experience with Auckland Council processing and auditing building consents.
- The projects put forward for the appellants Design 3 application were category 1 buildings – more appropriate for a Design 1 application.
- The information provided by the appellant did not meet the standards for Design 3, and also did not meet the minimum standards for Design 1.
- The Appellant lacked a full understanding of the design process.

4.3 The Registrar concluded:

*"The basis for the Registrar's decision to decline the application*

- I have been delegated under S312 (1) to review the assessment report and make a decision about the appellant's application.
- I reviewed the assessor's report and the appellant's application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

#### **5.0 Appellant's Submissions**

5.1 The Appellant included with his appeal a covering letter, curriculum vitae, record of work details and made an additional submission on 11 September 2017 outlining previous and current project work, expanded on knowledge of competencies 1, 2, 3, 4 & 5 and an example of a Statement of Works.

5.2 The Appellant provided hard copies of plans on the day for four projects he has worked on. These were previously submitted to the Board.

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<sup>7</sup> clause 10 and 11 of the Rules

- 5.3 The Board asked questions of the Appellant and the Appellant gave oral submissions.

## 6.0 Board's consideration

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the following Competencies for the Design 3 licence but the Appeal is based on a Design 2 and or Design 1 Licence:

### Design 2 Licence Competencies:

*Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.*

*Competency 2: Manage the building design process.*

*Competency 3: Establish design briefs scope of work and prepare preliminary design.*

*Competency 4: Develop design and produce construction drawings and documentation.*

*Competency 5: Manage construction phase.*

- 6.2 The Board then considered Competencies 1, 2, 3, 4 & 5 for a Design 2 and/or Design 1 Licence. These Competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

### *Board's findings*

- 6.4 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2, 3, 4 & 5 for a Design 1 Licence.
- 6.5 The Board would encourage the appellant to attain further practical experience working in design before considering applying for a Design 2 licence.

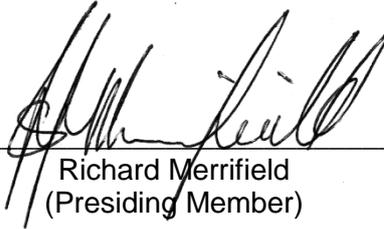
## 7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence the Appellant with a Design 1 Licence.**
- 7.2 **The Board directs the Registrar to issue a Design 1 Licence to the Appellant as soon as practicable.**

## 8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant **are not** to be made public.

Signed and dated this 2<sup>nd</sup> day of October 2017



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Richard Merrifield  
(Presiding Member)

**Advice Note (not part of Board's Decision)**

Extracts from the Act:

**“330 Right of Appeal**

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
- (a) *decline to licence the person as a building practitioner;*
  - ...
- (2) *A person may appeal to a District Court against any decision of the Board—*
- (a) *made by it on an appeal brought under subsection (1);*
  - ...

**331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.”*